REMARKS/ARGUMENTS

1.) Claim Amendments

Applicant respectfully submits no new matter has been added. Accordingly, claims 1-10 and 12-24 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.) Claim Rejections – 35 U.S.C. § 103 (a)

Claims 1-8, 10, 12-19 and 21-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Clark, *et al.* (US Patent Publication No. 2005/0086062) in view of Vasudevan, *et al.* (US Patent Publication No. 2002/0131496). As discussed during the telephone interview held on May 25, 2010, the Applicant once again traverses the Examiner's rejection and submits the following remarks for the Examiner's favorable reconsideration.

As repeatedly stated in the previous responses to the Examiner's office actions and during the two telephone interviews, the data transfer rate over a bit transfer session, even after establishing a data session with a mobile station, may fluctuate due to the mobility of a mobile station, the overall load on the air-interface, and relevant channel conditions such as channel interferences, shadowing, as well as number of other factors or parameters. Accordingly, even after a user has been promised with a certain quality of service (e.g., 2M bits/second downstream bandwidth), the promised bandwidth may not be available and allowed to be used by the user during a particular bit transfer session. Accordingly, in order to ensure that the end user is not charged inappropriately for bandwidth that may have been promised but not delivered, the present invention discloses and claims an invention that dynamically determines the bandwidth that is available and allowed to be used by the bit transfer session for a particular mobile station and charges the mobile station accordingly. The Applicant submits that neither Clark nor Vasudevan anticipates or renders obvious the present invention.

In that regard, with respect to the Clark reference, the Applicant submits that Clark talks about allowing the user to select a capacity (bit-rate) that is desired for a particular application and paying a tariff according to the selected capacity. Thus, a user will pay a higher rate when using a 4 Mbit /s than when using a 2 Mbit /s connection. This is similar to the previously cited Mononen reference where the user is allowed to pick a rate plan associated with different bandwidth requirements. The rest of Clark then talks about determining from which server the data is being downloaded and charging different rates per application server. For example, when you download movies from a recognized legitimate server, you charge a rate that is lower than from an unrecognized peer-to-peer server. This is to encourage users to download contents from legal servers (paragraph 11, Clark). Accordingly, nothing in Clark discloses the step of "dynamically determining a bandwidth on the wireless communication link available to and allowed to be used by the bit transfer session for said mobile station" as claimed by the present invention.

Furthermore, the Examiner incorrectly cited Vasudevan as disclosing "charging logic applying a particular charging rate for said mobile client based on said received bandwidth information for said data bit transfer session." However, paragraph 30 of Vasudevan cited by the Examiner instead states that the adaptive transcoder creates a bandwidth adaptive video bit stream by replacing I, P, or B frames, as appropriate, with Psuedo-P frames, in order to lower the bit-rate of the video stream to a desired rate. Accordingly, in response to fluctuating bandwidth problem, Vasudevan instead provides for an adaptive transcoder for encoding the data to meet the changed bit rate. However, nothing in Vasudevan discloses or teaches a "charging logic applying a particular charging rate for said mobile client based on said received bandwidth information for said data bit transfer session" wherein said bandwidth information has been dynamically determined on the bit transfer session as claimed by the present invention. Accordingly, other than similarly recognizing that the bandwidth can fluctuate over a communication link as further identified in the background of the present application, it takes a totally different approach in adaptive transcoding the data to comply with the changing bit rate rather than dynamically determining and applying a particular charge

rate in accordance with the teachings of the present invention. As a result, Vasudevan, independently or in combination with Clark, simply fails to anticipate or render obvious presently pending independent Claims 1 and 12 and their respective dependent claims.

Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Clark, *et al.* in view of Vasudevan, *et al.* and further in view of Sawyer (US Patent No. 5,828,737). Claims 9 and 20 depend from now allowable independent Claims 1 and 12, respectively and recite further limitations thereto. Therefore, the allowance of claims 9 and 12 is respectfully requested.

CONCLUSION

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,

/John C. Han,Reg#41403/

John C. Han
Registration No. 41,403

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Ericsson Inc.
6300 Legacy Drive, M/S EVR 1-C-11
Plano, Texas 75024

(972) 583-7686
john.han@ericsson.com